Outlook

Public Comment Submission for Agenda Item 16.c – April 22, 2025 City Council Meeting

From HermosaBeachPropertyOwner <HermosaBeachPropertyOwner@proton.me>
Date Mon 4/21/2025 7:21 PM
To City Clerk <cityclerk@hermosabeach.gov>; Myra Maravilla <mmaravilla@hermosabeach.gov>

1 attachment (315 KB)
Comment_Letter_Item_16c_HBCC_042225.pdf;

Dear Ms. Maravilla,

Please find attached my public comment letter regarding Agenda Item 16.c scheduled for the City Council meeting on April 22, 2025.
I respectfully request that this correspondence be:

1. Entered into the official public record for Agenda Item 16.c.
2. Distributed to all members of the Hermosa Beach City Council and the City Attorney.

Recipients:

- **Mayor Dean Francois**
- **Mayor Pro Tem Rob Saemann**
- **Councilmember Mike Detoy**
- **Councilmember Ray Jackson**
- **Councilmember Michael D. Keegan**
- **City Attorney Patrick T. Donegan**

The attached letter includes a detailed analysis and supporting documentation relevant to Agenda Item 16.c.
Thank you for your attention to this matter and for ensuring that the City Council and City Attorney receive this material in advance of the meeting.

Please confirm that this supplemental comment has been included in the official public record.

Sincerely,
A Concerned Hermosa Beach Property Owner

Subject: Public Comment on Agenda Item 16.c – Staff Report 25-CA-012

To the City Clerk, Councilmembers, and City Attorney Patrick Donegan:

This comment responds to the **April 22, 2025 Staff Report 25-CA-012** regarding my **April 9, 2025, Cure and Correct** letter submitted pursuant to Government Code **§ 54960.1**.

The original submission was respectful, narrow in scope, and rooted in the clear text of the Brown Act.
It offered the City a straightforward opportunity to acknowledge and correct serious procedural errors made during the March 25, 2025, meeting.
Rather than respond in kind, the City Attorney's report chose to deliver a tone-deaf exercise in legal deflection, rhetorical mischaracterization, and condescension.

Let us begin with one of the most glaring missteps: the repeated, almost obsessive focus on anonymity, as if one's identity were somehow a condition for statutory compliance.
The Brown Act imposes no such requirement, and the City Attorney's choice to lead with this fact, repeat it, and editorialize it as 'somewhat surprising' is not legal analysis, it is tone-policing.

Equally disingenuous is the claim that the City 'does not have a physical address' and could therefore respond only by email, as if that somehow prevented a reply.
I submitted my Cure and Correct letter by email and included a valid return address, which the City Attorney quoted verbatim in his report.
If a response was genuinely intended, all he had to do was *click* **Reply**.
This was not a logistical barrier; it was a choice not to engage.

Worse still, the report implies that the mere act of distancing oneself from Frank Angel and his litigation is cause for suspicion, when in fact that disclaimer was included for one reason only: to prevent precisely the kind of conflation the City has now engaged in.

Mischaracterization and Cherry-Picking of Claims

Despite submitting the only Cure and Correct letter on record, the City chose to respond primarily to Mr. Angel's Cease and Desist, while reducing my submission to little more than a procedural footnote.
The report barely addresses the actual violations raised. Let us clarify:

- **My April 7, 2025 written comment was timely submitted and received,** yet never read, referenced, or responded to.
  It was acknowledged in passing by the City Attorney as one of 'two comments,' and then buried in the agenda packet without discussion.
- **Mr. Angel's comment, like mine, was timely and fully compliant with the City's own submission procedures.**
  It was received before the stated deadline and should have been treated accordingly.
  The City's portrayal of the submission as a near-miss because it arrived 'two minutes before the deadline' is not just legally indefensible; it is procedurally absurd.
  A deadline is not a discretionary threshold; it is a cut-off.

To suggest a submission is less valid because it was received two minutes before closing time is like a transit agency refusing to board a passenger who arrived two minutes before departure.
In addition, **It was falsely labeled 'Post Deadline'** and added to the agenda only after Mr. Angel submitted his March 31, 2025, Cease and Desist letter.
Shortly thereafter, it was quietly removed from the agenda packet altogether.
As of April 19, 2025, at 11:35 AM, the comment remains unavailable to the public.
This is an indefensible suppression of viewpoint.
By contrast, a screenshot captured on April 2, 2025, at 10:19 PM shows that the comment was included at that time, only to be removed later.
This reflects not just exclusion, but post hoc erasure. It raises serious questions as to intent. (See screenshots included at the bottom of this document.)

- **Mr. Angel's Zoom participation was explicitly acknowledged by the Mayor, who stated he would be recalled after a technical glitch.**
  He never was. The City cannot offer a platform for public comment, recognize a speaker, and then revoke that opportunity retroactively without consequence.
  That is a clear violation of **§§ 54953(b)(3)** and **54954.3(a),** one I specifically addressed in my original Cure and Correct letter.

Councilmember Jackson's Misuse of Undisclosed Material

The most flagrant violation, one the City Attorney artfully sidestepped, was **Councilmember Jackson's verbatim recitation** of a letter authored by Mr. Higgins to the HCD, a document never included in the agenda packet and never made available to the public as required under Gov. Code **§ 54957.5.**
From timestamp 3:41:22 to 3:48:33, Councilmember Jackson read nearly seven minutes directly from Mr. Higgins' letter.
Midway through this recitation, he was briefly interrupted for 13 seconds by another Councilmember who questioned the origin of the letter, a procedural objection that directly underscored the very violation raised in this Cure and Correct letter.
The objection was summarily dismissed without clarification or intervention from the City Attorney, and Jackson immediately resumed reading.
Any implication that these remarks were merely Jackson's personal commentary is both disingenuous and disproven by the video record: he was reading directly from a prepared document, word-for-word, occasionally looking up only to editorialize in support of its contents.
Had Mr. Higgins appeared in person, he would have been limited to three minutes. Instead, he was **given nearly seven minutes of floor time by proxy** through a Councilmember after public comment had already closed.
This was not commentary. It was a legislative maneuver designed to elevate one viewpoint while insulating it from challenge, a maneuver that violates the spirit and letter of multiple provisions of the Brown Act.

Mr. Higgins' viewpoint was given a Councilmember's voice, an extended platform, and no opportunity for rebuttal.
That is the very abuse the Brown Act was designed to prevent.
Any suggestion that this was merely 'Councilmember Jackson's personal commentary' collapses under the video evidence.
He was clearly reading from someone else's document, without attribution until the end, and the content remains unavailable for public scrutiny.
This is not protected speech. It is legislative misuse of privilege.

The violations are unmistakable:

- Gov. Code **§ 54954.2(a)(1)**: Item must be listed on the agenda for discussion. Mr. Higgins' letter was not.
- Gov. Code **§ 54957.5(a)**: Writings distributed or read into the record must be made publicly available when used. This one was not.
- Gov. Code **§ 54954.3(c)**: A Councilmember may not enjoy expanded speaking rights beyond those afforded to members of the public, yet Mr. Higgins was given nearly seven minutes by proxy.

Yet this conduct was entirely omitted from the staff's response. Why was it ignored?

Conclusion

This agenda item does not cure, correct, or even attempt to engage with the violations identified in my April 9 submission.
The legal arguments are misapplied, the facts misrepresented, and the tone patronizing.
The Brown Act does not recognize different rules based on credentials, titles, or affiliation, nor does it grant legislative actors greater speaking rights than the public they serve.
The City had a chance to respond with integrity.
It chose to respond with gamesmanship and condescension.

City Attorney Donegan, over the course of the past month, I have observed a pattern of selective framing and dubious legal positioning, beginning with your advice to this Council on what are, by any objective reading, flagrant violations of the Brown Act. Rather than acknowledge clear procedural errors, your office has chosen to sidestep the law's purpose in favor of minimizing exposure, while doing nothing to correct the underlying conduct.
That same posture extends to your advice on the City's STVR ordinance, none more troubling than your claim in the City's March 25 meeting that, **"my position is that the City's short-term vacation rental ordinance is valid and enforceable in the coastal zone as presently constructed."**
That position, offered without qualification, ignores both the plain language of the Coastal Act and **two formal communications from the California Coastal Commission**, **including one from the Commission Chair, warning Hermosa Beach that such a policy is not enforceable without a certified Local Coastal Program and an approved Coastal Development Permit.**
(See Attached)

You further asserted that the City's position is justified because it previously "prevailed" in litigation over its STVR ordinance.
But those cases were resolved at a preliminary stage, without a full trial or a ruling on the merits, and long before the current legal landscape took shape, making such confidence premature at best.
That line of reasoning borders on judicial negligence.
Since that 2018 enforcement action, the legal landscape has fundamentally changed. Two landmark decisions illustrate this shift. In **Kracke v. Santa Barbara**, the court held that a ban on STVRs in the Coastal Zone without an LCP violates the Coastal Act's access provisions. In the more recent decision in **Keen v. City of Manhattan Beach**, a neighboring jurisdiction, the court again found such enforcement unlawful.

Notably, the prevailing attorney in Keen was Frank Angel, the same attorney who is now representing the plaintiffs challenging Hermosa Beach's STVR ordinance under substantially the same theory.

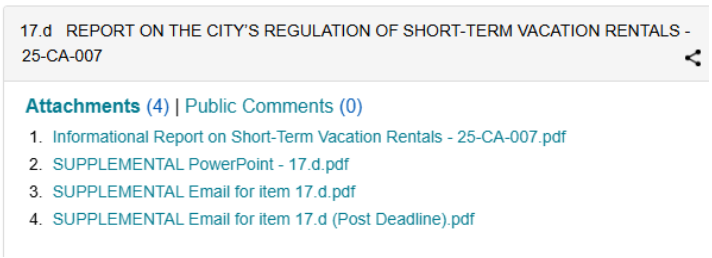
But setting the law aside for a moment, what precisely is the motive here?
You are now on record recommending a legally fragile course of action not once, but twice, first by dismissing clear Brown Act violations as inconsequential, and then by affirming a regulatory posture that directly contravenes Coastal Commission guidance, invites costly litigation, and was plainly cautioned against as early as 2016 and 2017.
The City has now been sued on this same issue for the third time.
Is this truly sound legal advice, or just profitable for those giving it?

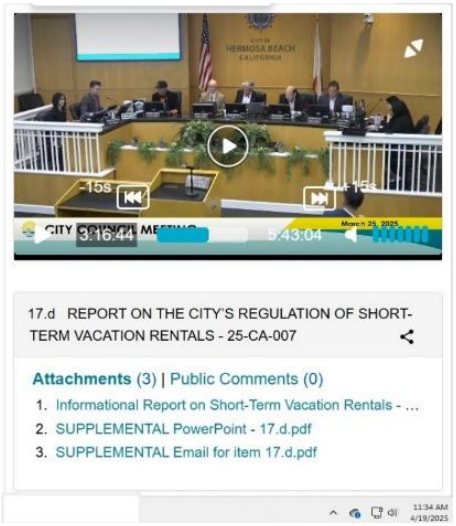
There is a known phenomenon in which certain municipal law firms recommend aggressive enforcement policies, knowing full well they will likely result in drawn-out litigation that benefits only the firm.
I sincerely hope that is not what's happening here.

If the City of Hermosa Beach insists on charting a course that has been flagged by both legal precedent and administrative authority as untenable, the residents are entitled to ask: Who is truly being served—those who pay the bills, or those who send them?

This letter is submitted independently of any law firm, attorney, or ongoing litigation. All statements and positions are my own.

Respectfully,
A Concerned Hermosa Beach Property Owner





STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY EDMUND G. BROWN, JR., *Governor*

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

May 9, 2016

SENT VIA EMAIL TO kchafin@hermosabch.org
AND REGULAR U.S. MAIL

Ms. Kim Chafin
Senior Planner
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Subject: City Council May 10, 2016 meeting – ITEM 5 - TEXT AMENDMENT TO THE MUNICIPAL CODE, TITLE 1 AND TITLE 17, TO EXPRESSLY PROHIBIT SHORT-TERM VACATION RENTALS IN RESIDENTTIAL ZONING DISTRICTS

Dear Ms. Chafin,

Thank you for taking the time last week to talk through this issue and the City's impending action to expressly prohibit short term vacation rentals ("STVRs") in residential zoning districts, including in the Coastal Zone. Thank you also for your attention to this letter. This matter just recently came to our attention, and we are responding as quickly as we could, but we look forward to the more comprehensive dialogue that City staff proposes in the staff report addressing the proposed municipal code change noted above.

As noted in the City's staff report, the Coastal Act affords great protection to low cost overnight visitor serving accommodations. Commission staff agrees with that statement, and in addition, we believe the proposed ban on short term vacation rentals constitutes "Development" under the Coastal Act, as it constitutes a change in access to the coast, therefore requiring authorization via a Coastal Development Permit ("CDP"); the Commission has long considered lower cost accommodations to be facilities that are critical to providing coastal access. Without lower cost accommodation, a large segment of the population will be excluded from overnight stays at the coast. Since the City of Hermosa Beach does not have a Local Coastal Program certified by the Commission, the City would need to obtain a CDP from the Commission in order to regulate short term vacation rentals in the Coastal Zone. The Commission has consistently conveyed to local governments that a CDP, for an uncertified local jurisdiction, or an LCP Amendment and subsequent CDP, for a certified local jurisdiction, is necessary to impose such regulations.

Please note, that staff believes an outright ban of short term vacation rentals in the Coastal Zone of Hermosa Beach, without benefit of the necessary CDP, would be inconsistent with the public access policies of the Coastal Act. To that end, Commission staff strongly supports the City staff's recommendation to the City Council to direct staff to initiate a more comprehensive dialogue about the issue to investigate all possible options prior to amending the municipal code, and to coordinate with Commission staff in doing so. Attached to this cover letter, you will find a

letter that Commission staff recently sent to the City of San Clemente. In the contents of this letter you will find our general position with regard to STVRs.

Thank you for your attention to this matter. We look forward to working with the City to ensure that low cost visitor serving accommodations are provided and protected in Hermosa Beach. Please do not hesitate to call our office at (562) 590-5071 to speak with our staff if you have any questions.

Sincerely,

Jordan Sanchez
Enforcement Officer
California Coastal Commission

cc: **Lisa Haage, Chief of Enforcement, CCC**
Andrew Willis, Southern California Enforcement Supervisor, CCC
Steve Hudson, Deputy Director, CCC
Teresa Henry, District Manager, CCC
Chuck Posner, Planning Supervisor, CCC
Zach Rehm, Coastal Program Analyst, CCC

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ATTACHMENT C

(Sent Individually via US Mail)

December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and

Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at: https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your local district Coastal Commission office for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger

families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an 'all or none' proposition. Rather, the Commission's obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your local district Coastal Commission office for help in such efforts.

Sincerely,

STEVE KINSEY, Chair
California Coastal Commission